

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Department of Commerce and
Economic Opportunity

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Docket No. 13-0499

Approval of the Energy Efficiency and
Demand-Response Plan Pursuant to
220ILCS 5/8-103 and 220 ILCS 5/8-104
Of the Public Utilities Act

**REPLY BRIEF OF
THE PEOPLE OF THE STATE OF ILLINOIS**

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The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“the People” or “AG”), pursuant to the schedule established by the Administrative Law Judge (“ALJs”), hereby file their Reply Brief in the above-captioned proceeding.

I. INTRODUCTION

In its Brief, DCEO argues that its proposed plan should be approved by the Commission without modification, albeit that it agrees to work with the Stakeholder Advisory Group in implementing many of its provisions. DCEO IB at 2, 22, 30. Principal among its requests is that its proposed level of energy savings goals – an amount that DCEO made clear is conservatively low – should be approved, despite being assigned the statutorily required 25% of measures approved by the Commission, which has translated into 25% of the overall energy efficiency funding -- for critical public sector and low income programs. 220 ILCS 5/ 8-103(e); DCEO IB at 5. One reason DCEO’s goals are lower than they need be is tied to its proposal to reduce forecasted energy savings to conservatively set goals that are only a fraction of what they actually plan to capture, just in case evaluations find a realization rate of less than 1.0. While

DCEO admittedly faces the toughest challenges in engaging its public sector and low income customer groups in energy efficiency offerings, no support can be found in Section 8-103 or 8-104 of the Act for such a reduction. That proposal should be rejected by the Commission, with the direction to revise energy savings goals in a modified plan.

Another reason DCEO's proposed reduction in goals are in need of upward modification is tied to its design of several, separate "targeted" programs. DCEO proposes to offer more than 20 separate programs for public sector and low income customers that could be more efficiency promoted and delivered by combining them into a simpler construct of custom services and financial incentives, and in a more comprehensive fashion, according to AG witness Mosenthal. For the reasons stated below and in the People's Initial Brief, the Commission should order DCEO to revise its plan and increase the proposed amount of energy savings goals relative to this re-design.

DCEO also asks the Commission to approve an evaluation, measurement and verification ("EM&V") of energy savings methodology that would eliminate the Commission's adopted net-to-gross ("NTG") evaluation methodology that ensures "net" savings are calculated under the Total Resource Cost ("TRC") test, consistent with sections 8-103 and 8-104 of the Act. *See* 220 ILCS 8-103(a), 8-104(a). That proposal should be rejected as inconsistent with the directives of Sections 8-103 and 8-104, as discussed further below.

DCEO originally requested no limits on its ability to modify programs and transfer program dollars within its portfolio. In its Brief, however, DCEO states that would agree to adjust savings goals upward when program adjustments of more than 20% of a program budget are involved. DCEO IB at 13. The People support this request with some modification, as discussed below.

These and other issues are discussed below.

II. PROPOSED DCEO PROGRAMS

A. Custom and Standard Programs

As noted in the People's Initial Brief, DCEO has proposed a portfolio of programs that more or less fall into three main categories: public sector, low-income sector and market transformation programs. AG IB at 8. The People appreciate DCEO's agreements to reallocate funds identified for the targeted programs to other public sector programs in the event the money cannot be spent as effectively as the Plan anticipates and to update its energy efficiency potential study within the next six months to include the savings potential for public sector data center projects in Illinois and to share those results with the SAG. DCEO IB at 17. Overall, the People support DCEO's plan to serve the public and low-income sectors through its Standard and Custom programs and encourage the Commission to approve these programs, with the caveats provided below. AG IB at 8-9.

B. Public Sector "Targeted Programs"

Notwithstanding the People's general support of the Custom and Standard programs, the People still object to DCEO's planned "market transformation programs" primarily because DCEO has not demonstrated why these programs must act as standalone programs and not be offered as targeted services within the Custom program. AG IB at 10. From the outset, the People applaud DCEO's commitment to continue working with the SAG on a number of the proposed targeted programs. DCEO IB at 17. However, this commitment does not fully overcome the objections raised by the People in their Initial Brief.

First, the People noted that the programs act more like services that support the primary programs, which over-complicates the overall plan. Second, the act of separating out these

program budgets paints a very unclear picture of which programs are cost-effective. AG Ex. 1.0 at 8. Finally, the rationale behind many of these programs and how they are structured is not clear or compelling. DCEO states in its Brief that it “agrees to re-allocated the funds identified for the targeted programs to other public sector programs ‘in the event the money cannot be spent as effectively as anticipated in this Plan.’” DCEO IB at 17. This accommodation is in response to a Staff recommendation, according to DCEO. But Staff’s Initial Brief only references this alternative within the construct of the Wastewater Treatment Facilities Program. Staff IB at 17. The proposal, too, is vague and lacks clear guidelines for implementing the strategy. The People recommend that the Commission order DCEO to focus on comprehensive solutions for its public customers and offer most of these programs as services offered under the Custom program. AG IB at 9. This will eliminate extra administrative costs and improve marketing of the programs overall.

1) Smart Energy Design Assistance (“SEDAC”)

The People, in their Initial Brief, noted that they were satisfied with the resolution of the double-counting and implementation rate issues potentially impacting DCEO’s proposed Smart Energy Design Assistance (“SEDAC”) program. AG IB at 10-11. Nonetheless, the People still note that DCEO has not made it entirely clear why this program should be administered separately to customers. AG IB at 11. DCEO, in its Initial Brief, noted that it has market experience with SEDAC and performing the anticipated design assistance. DCEO IB at 29. Generally speaking, the People appreciate DCEO’s market experience and accept that SEDAC could function as a standalone program. Nonetheless, there remains a danger, as noted by Mr. Mosenthal, that administrative barriers could still prevent customers from participating in both SEDAC and the Custom programs. AG Ex. 1.0 at 7-8.

The People provided support for their recommendation that DCEO combine SEDAC into its Custom program in order to provide integrated services to that subset of customers who are sincerely motivated to follow through with implementation. AG IB at 11. Finally, the People noted that a standalone program as DCEO has proposed creates a risk of marketplace confusion. AG IB at 11. The People reiterate that integrating SEDAC into the custom programs would allow for better management of resources and assist in overcoming some administrative barriers. AG IB at 11. In addition, it may be helpful for DCEO to seek the input of the SAG on these issues prior to implementing this program. The People, therefore, urge the Commission to instruct DCEO to submit a revised plan under Section 8-103(f) and 8-104(f) to design SEDAC in such a way as to avoid market confusion and ensure that no administrative barriers are created that would prevent customers from participating in both SEDAC and the Custom program.

2) High Impact Natural Gas Efficiency Bonus (“HINGE”)

In their Initial Brief, the People generally supported the concepts behind DCEO’s proposed High Impact Natural Gas Efficiency Bonus (“HINGE”) program, a vehicle to provide “bonus incentives” for large gas projects. AG IB at 11-12. Despite resolving several of the issues surrounding HINGE, the People remain concerned about the cost-effectiveness of the HINGE offering as a stand-alone program. DCEO makes statements in its Initial Brief that certain pilot projects ultimately proved to be twice as cost-effective as projected. DCEO IB at 14. However, as previously noted by the People, HINGE has an estimated Total Resource Cost (“TRC”) benefit-cost ratio of 0.86. DCEO Exhibit 2.11. While the People applaud the results that DCEO achieved on certain projects in the pilot, the People note that citation to a few cost-effective projects does not rectify DCEO’s own projections that, overall, the HINGE program is not cost-effective. AG IB at 11.

The People also remain concerned about the additional administrative costs associated with HINGE that, as modeled, would only capture additional non-cost-effective savings. AG IB at 11; AG Ex. 1.0 at 11. Therefore, the People urge the Commission to direct DCEO to file a revised plan under Section 8-103(f) and 8-104(f) that offers the HINGE program as a component of its Custom program plan that offers bonus incentives up to 75% of retrofit and 100% of lost opportunity incremental costs as necessary to capture cost-effective savings.

3) Wastewater Treatment Facility Program

In their Initial Brief, the People noted that DCEO may not be taking full advantage of the potential of its Wastewater Treatment Facility (“WWT”) program because DCEO has chosen not to devise its WWT program as a targeted marketing strategy within its Custom program but rather treat it as a standalone program. AG IB at 13. As the People noted, this runs the risk of ignoring many potentially rewarding efficiency opportunities common among WWT facilities. As a prime example, the program targets only a single technology category – aeration systems. AG IB at 13. Unfortunately, based on a review of AG witness Mosenthal, it appears that the program ignores all other electric efficiency opportunities beyond the aeration systems and the program achieves no gas savings – an inappropriate result for a standalone program. AG Ex. 1.0 at 12.

DCEO, in its Initial Brief, however, did not directly address these concerns. Given the marginal cost-effectiveness of this program,¹ it remains unclear to the People why DCEO would not choose to target WWT facilities as customers and pursue the most cost effective, comprehensive solutions for them under the Custom program. The People would, therefore, urge the Commission to recommend that DCEO simply target the WWT sector through dedicated

¹ This is particularly true when compared to the highly cost-effective projects in most public sector custom programs with which Mr. Mosenthal is familiar.

account management in its Custom program, increasing the ability to add custom features or services as necessary and increasing program flexibility. AG IB at 13-14; AG Ex. 1.0 at 12-13.

4) Combined Heating and Power

In their Initial Brief, the People acknowledged the worthwhile nature of DCEO's proposed Combined Heating and Power ("CHP"), but raised concerns that it could be more adequately promoted as a measure under either the Custom or Standard programs instead of being a standalone program. AG IB at 14-15; AG Ex. 1.0 at 13. If the Commission allows DCEO's stand-alone approach, there is a potential risk that certain efficiency opportunities will be ignored, resulting in lost savings and eliminating opportunity to properly size the CHP system to be optimized to a customer's lower overall facility electric and thermal loads. AG IB at 14. Following the People's recommended approach, however, DCEO could promote and incentivize CHP projects whenever they are cost-effective and make sense, but also ensure *other* cost effective efficiency measures are adopted at the same time. Therefore, the People urge the Commission to direct DCEO to include a CHP measure as a subset of the Custom program.

In addition, the People raised concerns in their Initial Brief related to the evaluation, measurement, and verification of DCEO's CHP program. This discussion appears below in the section labeled Evaluation, Measurement & Verification ("EM&V").

5) Aggregation Program

As noted in their Initial Brief, the People caution DCEO that the aggregation program as proposed appears to be less cost-effective than either the Standard or Custom programs and does not encourage any different efficiency measures. AG IB at 15; AG Ex. 1.0 at 15.

Notwithstanding, the People are satisfied with the program details as presented by DCEO, but encourage DCEO to seek the input of the SAG on certain issues prior to implementing this

program. The People urge the Commission to instruct DCEO to include Aggregation in its Custom program or design the Aggregation program in such a way as to avoid market confusion.

6) Energy Performance Contracting Program

As with SEDAC, the People generally support the proposed Energy Performance Contracting (“EPC”) program, but remain concerned that retaining EPC as a standalone program risks marketplace confusion and excessive administrative burden. As noted by the People in their Initial Brief, integrating EPC into the Custom program would allow for better management of resources. AG IB at 15. Again, as noted throughout the People’s Initial Brief, it may be helpful for DCEO to seek the input of the SAG on certain issues prior to implementing this program. The People, therefore, urge the Commission to instruct DCEO to include EPC in its Custom program in a revised Plan, filed pursuant to Section 8-103(f) and 8-104(f) of the Act.

III. ELECTRIC AND GAS SAVINGS GOALS AND SPENDING LIMITS

Both AG witness Philip Mosenthal and NRDC witness Chris Neme testified that DCEO’s energy savings goals are unnecessarily and unreasonably low. AG Ex. 1.0 at 17-18, 22-23; NRDC Ex. 1.0 at 5. In addition, DCEO has proposed a spending level for its Plan 3 that exceeds amounts spent in Plan 2, coupled with this lower energy savings per dollar spent proposal. *See* NRDC Ex. 1.0 at 8, footnote 2.

Staff witness Jennifer Hinman has proposed that DCEO lower its energy savings goals so that they do not exceed the average of the savings achieved in the previous two years (electric PY 4/gas PY 1 and electric PY 5/Gas PY2). Staff IB at 5. Not surprisingly, DCEO states in its Brief that it agrees with this recommendation. DCEO IB at 11. The problem with this approach, however, is that this creates a Plan with even further reduced goals than the conservative numbers DCEO admits to proposing, with the same percentage of funding of the total dollars

collected from ratepayers, i.e. the statutorily required 25% of total funds collected by gas and electric utilities. *See* 220 ILCS 5/8-103(e); 8-104(e); DCEO IB at 5 (“The Commission has consistently interpreted the (statutory) language to mean percent of funding in both cases under the previous plans.”)

As noted by NRDC witness Neme, on the electric side, DCEO is proposing to spend 30% more per MWh saved than it spent in PY4. NRDC Ex. 1.0R at 8. On the gas side, the proposal is even less ambitious, with DCEO proposing to spend an average of 132% per therm more than in GPY1 (i.e. more than double the spending) to acquire just 13% more savings per year. *Id.* at 11. AG witness Mosenthal, as noted in the AG Initial Brief, concurred that DCEO’s proposed savings goals should be rejected by the Commission, with DCEO ordered to increase savings goals to levels commensurate with past performance (Electric PY 4/Gas PY1).

In Rebuttal testimony, DCEO’s Witness Agnes Mrozowski outlined four potential factors in defense of lower program targets: (1) changing federal lighting standards, (2) uncertainty about new technology, (3) greater inclusion of long-lived measures, and (4) a desire to be conservative regarding future commitments. DCEO Ex. 1.0 at 10-11. But as explained in detail in NRDC’s Initial Brief, these factors do not justify DCEO’s proposed lower savings targets. *See* NRDC IB at 8-11. In particular, DCEO’s claim that new lighting standards impacting “T12” bulbs – the common fluorescent bulbs found in public sector, commercial and industrial buildings – is a significant driver for increased costs and reduced savings goals is particularly insufficient. The new T12 lighting standard goes into effect on January 1, 2016, which is in the middle of PY 8. DCEO Ex. 6.0 at 10; Tr. at 35. During cross examination, Ms. Mrozowski attributed this change is the biggest reason for higher costs for energy savings delivered for the lighting program. *Id.*; Tr. at 34. Yet, DCEO Ex. 1.2, page 4, shows that the budget for the

Standard Program, which includes T12 lighting², is the highest in PY7, more than a year before the federal standard change takes effect. DCEO's own exhibits demonstrate why the agency's justification for lowered electric savings goals are unreasonable.

Staff's proposal to further lower the goals beyond the already inappropriately reduced goals should likewise be viewed by the Commission as a non-starter. Staff points to DCEO past performance in terms of goals achievement and prior customer participation levels as reasons for the proposed downward adjustment. Staff IB at 6-7. But DCEO is on record in Docket No. 11-0593 stating that it has largely re-adjusted what were originally overstated goals in DCEO's first Plan through a revised plan presented to its utility partners that were implemented in (electric) PYs 3 and 4. In that case, witness Mrozowski stated that DCEO revised its share of the annual electricity load reduction goals from approximately 20 percent to about 15 percent of the total utility/DCEO goal. *See* ICC Docket No. 11-0593, DCEO Ex. 1.0 (Direct Testimony of Agnes Mrozowski, filed September 20, 2012) at 5. As noted above, Mr. Neme's and Mr. Mosenthal's recommendation is that the savings goals presented in this docket be revised to match (electric) PY4 and (gas) PY1 levels.

The People would add that Commission approval of savings goals that offer no incentive for DCEO and its subcontractors to achieve maximum energy savings by continually modifying programs as need be and evaluations direct does nothing to serve the annual goals articulated by the General Assembly in both Section 8-103(b) and 8-104(b) of the Act.

For all of the reasons stated in both the AG Initial and Reply briefs and in NRDC briefs, the Commission should order DCEO to re-file its Plan to include gas and electric savings goals consistent with its Electric PY 4 goal and its Gas PY 1 goal.

² Tr. at 34-35.

IV. NET-TO-GROSS ADJUSTMENTS/DCEO's ADJUSTED GROSS METHODOLOGY PROPOSAL

A. DCEO's Proposal To Do Away With NTG Analysis For All Programs Should Be Rejected.

DCEO has proposed that the existing NTG framework, which ensures that net savings are counted when measuring and verifying energy savings goals to ensure cost-effectiveness of programs, be eliminated for *both* its public sector and low-income programs. DCEO IB at 33. Specifically, DCEO proposes to do away with any assessments of free ridership or spillover. *Id.* In addition, the agency proposes that realization rates of 80% for public sector programs and 90% for low income programs automatically be applied to the establishment of energy savings. *Id.*

As noted in the AG Initial Brief at pages 19-27, this adjusted Gross Methodology proposal is contrary to both Section 8-103 and 8-104, which require the calculation of energy savings based on “net” results, as defined by the Total Resource Cost test, but also has the effect of unnecessarily reducing energy savings goals to be established in this docket. *See* AG IB at 19-27. Again, Section 8-103 and 8-104 of the Act require the delivery of *cost-effective*³ programs by utilities and DCEO. 220 ILCS 5/8-103(a), (f)(5); 8-104(a), (f)(5). Cost-effective is

³ Section 8-103(b) and 8-104(b) of the PUA requires the provision of “cost-effective” energy efficiency measures to meet incremental annual energy savings goals. As used in these Sections, “cost-effective” means that the measures satisfy the total resource cost test, and “total resource cost test” is defined in the Illinois Power Authority Act as “a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the *net* present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases.” *See* 20 ILCS 3855/1-10.

specifically defined by the General Assembly as a measure that incorporates a benefit-cost ratio greater than one calculated based on the ratio of the *net* present value of the total benefits of the program to the *net* present value of the total costs, as calculated over the lifetime of those measures. 220 ILCS 8-103(a); 8-104(a); 20 ILCS 3855/1-10. These statutory provisions also specifically envision the evaluation of efficiency programs – including those programs delivered by DCEO, and specifically identify that no more than 3% of program budgets be allocated to evaluation costs. *See* 8-103(f)(7); 8-104(f)(8). Finally, the General Assembly made clear that utilities and DCEO would be held to a specific performance standard, albeit one that excludes the savings achieved under low-income programs. Both DCEO and the utilities risk losing authority for program administration to the Illinois Power Agency if they fail to meet the energy savings goals as modified by the Commission after a three-year period. 220 ILCS 5/8-103(j). In short, the General Assembly specifically concluded that evaluation of cost-effectiveness of programs was essential to ensuring cost-effective program delivery.

As noted in the AG Initial Brief, the People do not oppose deeming a 1.0 NTG ratio for low-income programs. AG IB at 23. There is statutory support for such a position, too. Section 8-103(f)(5) and 8-104(f)(5) exclude DCEO's low-income programs from the TRC cost-effectiveness requirements of subsection (a) of these statutory provisions. That being said, public sector programs are *not* excluded from this cost-effectiveness analysis test. Those measures must continue to be evaluated by examining *net* cost-effectiveness. *See* footnote 2 above.

Moreover, the Commission has determined in multiple orders that Net-to-Gross analysis⁴ of program measures is critical to determining the cost-effectiveness of ratepayer-funded efficiency programs. As noted above, the Commission has been clear in numerous orders that the Section 8-103 and 8-104 program goals are net goals, and should reflect the true *net* savings captured. *See, e.g.*, ICC Docket No. 10-0570, Order of December 21, 2010 at 47; ICC Docket No. 10-0568, Order of December 21, 2012 at 72. That means examination of free ridership and spillover post-delivery of efficiency programs for the public sector, should be retained. Therefore, DCEO's proposal is contrary to Commission-approved procedures rules regarding energy efficiency program best practices.

The AG Initial Brief outlined all of the reasons why DCEO's proposed elimination of NTG adjustments for public sector program evaluation should be rejected by the Commission. *See* AG IB at 19-25. The People will not repeat them here. In sum, those reasons include the above-cited statutory provisions requiring a "net" examination of energy savings, prior Commission precedent adopting the NTG framework for both utilities and DCEO, public policy that argues that removing NTG from the public sector evaluation framework creates significant perverse incentives and ignores the true impact of the programs and evaluations of cost-effectiveness. *Id.*; *See also* AG Ex. 1.0 at 19.

In defense of its request to eliminate NTG evaluation practices, DCEO notes in its Brief that "Given the complicated nature of public sector financing and the often troubled fiscal situation of local governments, k-12 schools, universities, state and federal government, DCEO will never use free ridership as a criterion for whether a public entity will receive DCEO EEPs funding." DCEO IB at 35. CUB supports DCEO's request, arguing in its Brief that a "NTG

⁴ The NTG ratio is used to adjust the total estimated "gross" savings from all measures tracked through the program to estimate the true "net" effect that the program has produced. This can be different for a number of reasons, with the two primary components accounted for being "free ridership" and "spillover." AG Ex. 1.0 at 17.

approach is more appropriate in an environment where evaluators are not sure whether customers are aware of utility programs” and that “it would be inappropriate for a state agency such as DCEO to turn public entities away because of concerns about program evaluation results.” CUB IB at 4-6.

As noted by AG witness Mosenthal, virtually every efficiency program in North America operates under the same procedures as Ms. Mrozowski described in her testimony, i.e., not refusing a customer or inquiring into their motives. In fact, it would be arguably discriminatory (and inconsistent with Section 8-103(f)(5) to deny a customer a published rebate for which it is eligible because one suspects they may be a free-rider. The issue here is *not* whether the program honors its rebate offers for these customers, but one of accurately attempting to estimate the net impact of the program. Having to pay for free ridership is simply a cost of doing efficiency business. However, *program administrators can work to ensure this is minimized through its program designs and implementation practices*. The ICC has made clear that goals are intended to reflect the net effects of the programs. Doing away with that energy savings evaluation approach will hardly incite best practices in program delivery. AG Ex. 2.0 at 4-5; AG Ex. 1.0 at 20-21. CUB’s position ignores these facts, and should be rejected.

CUB’s empathy for DCEO’s proposal is likewise misguided. CUB’s sentiment incorrectly assumes that DCEO investigates customer motives and financial ability to pay in its marketing approach, and then turns customers away or in some way limits participation. No such approach to engaging public sector customers exists, in fact. As Mr. Mosenthal explained, Ms. Devens is ignoring the distinctions between program design and implementation on the one hand and measurement and evaluation of savings on the other. AG Ex. 2.0 at 4. Mr. Mosenthal

testified that he is not aware of *any* program that routinely denies customers participation in programs they are otherwise eligible for purely because they might be free-riders. *Id.* at 5.

DCEO also argues in its Brief that the lowered realization rates along with the elimination of NTG evaluation being proposed makes sense because various utility and DCEO evaluators use different methods for analyzing NTG ratios, thus creating inconsistent NTG values. DCEO IB at 34. But this is simply justification for the AG-proposed SAG creation of a consistent Policy Manual (as discussed later in this Brief) – not a reason to throw out the evaluation itself.

DCEO also argues that measuring free ridership and spillover as part of the NTG analysis is “quite complex” and, in addition, spillover (which generally increases NTG ratios) has been neglected in past analyses. DCEO IB at 34. Again, because evaluation techniques are complicated does not justify eliminating them.

DCEO also notes a “personal telephone communication from a senior fellow at ACEEE” as evidence that other Midwest states have adopted an “adjusted gross approach” for all or a portion of their energy efficiency programs. DCEO IB at 34. This is hardly persuasive or reliable evidence by which to eliminate an evaluation framework, however. It is unclear from this statement exactly what “adjusted gross” means in the context of this statement. DCEO’s statement also admits that these states have *retained* NTG analysis for at least a portion of their programs. The People and NRDC are advocating in this docket that DCEO’s public sector programs remain under the NTG analysis umbrella. That is not inconsistent with this representation of what other Midwestern states may or may not be doing in connection with NTG analysis, based on DCEO’s own testimony that some of these states have eliminated NTG for a *portion* of its programs.

Mr. Mosenthal testified, too, that evaluation of free ridership and spillover should and must continue for DCEO's public sector programs because some of DCEO's "market transformation" programs are designed as Request For Proposal ("RFP") solicitations. AG Ex. 1.0 at 21-22. This means customers must develop projects on their own and submit them to DCEO. But in Mr. Mosenthal's experience, a high portion of these projects may be measures customers are already contemplating and planning. This is the case because the program has not provided the marketing, outreach, and technical assistance to help customers find opportunities they did not already know about. In addition, as mentioned above, it appears DCEO expects to pay incentives that, on average, cover about one third of the efficiency measure costs in its Custom, HINGE and Aggregation programs, which constitute the bulk of spending in the public sector. Given that customers must contribute the other two thirds, it seems likely that some of these customers might have pursued these projects despite the incentives, according to Mr. Mosenthal. Given this uncertainty, NTG adjustments for free ridership and spillover in the evaluation of public sector programs are critical components of ensuring the delivery of cost-effective programs. *Id.*

DCEO also adds that retaining NTG analysis for public sector programs may impact DCEO's ability to provide *innovative* programs that have great value in the long term. DCEO IB at 34-35. This rationale for eliminating NTG analysis in public sector programs should be rejected, too. While it is unclear what specific programs are referenced by the term "innovative", DCEO has in no way suggested that NTG evaluation would specifically jeopardize the availability of innovative programs. In fact, it should be noted that DCEO witness Mrozowski testified in Rebuttal testimony that it is not requesting any prospective deeming and has agreed to

accept the evaluation results on a *retrospective*⁵ basis – a more stringent methodology for computing savings if the evaluation results are not favorable.

Finally, given DCEO witness Mrozowski’s testimony that the agency is not requesting any prospective deeming and has agreed to accept the evaluation results on a *retrospective*⁶ basis, the People concur that adoption of the proposed Staff Modified NTG Framework is unnecessary in this docket. DCEO’s willingness to apply NTG results retrospectively (to the extent the Commission orders NTG analysis) is the reason why Mr. Mosenthal did not submit his proposed Modified NTG Framework, which he submitted in both the ComEd and Ameren Plan 3 dockets. *See* ICC Docket No. 13-0495 (ComEd), AG Ex. 1.1; ICC Docket No. 13-0498 (Ameren), AG Ex. 1.1.

In sum, given the statutory criteria of cost-effectiveness, the requirements that evaluations of cost-effectiveness be made, Commission rulings adopting NTG analysis and best practices, as noted by Mr. Mosenthal, DCEO’s proposal to discontinue NTG analysis for public sector programs should be rejected. To not do so would result in unreasonably high estimates of savings in the public sector, and would discourage DCEO from making appropriate planning and program design changes to minimize free riders and attempt to maximize net savings and overall cost-effectiveness. *Pursuant to DCEO’s alternate request, public sector programs should be evaluated using NTG criteria and (as discussed below) a 1.0 realization rate, with retrospective application of evaluators’ calculation of energy savings.*

^{5 5} The AG Initial Brief incorrectly stated that Ms. Mrozowski accepts *prospective* application of evaluations. AG Initial Brief at 25.

^{6 6} The AG Initial Brief incorrectly stated that Ms. Mrozowski accepts *prospective* application of evaluations. AG Initial Brief at 25.

The Commission should order DCEO to resubmit its Plan, pursuant to Section 8-103(f) and 8-104(f), to incorporate NTG analysis for its Public Sector programs outlined in its Plan, and retrospective application of the evaluators' results, as agreed to by DCEO in its alternative proposal.

B. The Commission Should Reject DCEO's Request to Deem Reduced Realization Rates.

As mentioned above, realization rates are intended to adjust any variances between what the program administrator estimated savings were and what evaluations ultimately estimated. AG Ex. 1.0 at 22. As discussed in the AG Initial Brief, these adjustments are generally for factors within the Program Administrator's control, and thus DCEO should be held accountable for these variances. *See* AG IB at 20. By requesting a reduced realization rate (approximately 80% for public sector program savings and 90% for low income program savings), DCEO is essentially creating a contingency buffer of savings, by designing programs for a certain savings level and then reducing the savings to conservatively set goals that are only a fraction of what they actually plan to capture, to counteract evaluations that produce realization rates of less than 1.0. The bottom line effect of this request is to simply reduce projected savings goals as a hedge. This is inappropriate and should be rejected by the Commission, for all of the reasons detailed in the AG Initial Brief at pages 25-27. DCEO's Brief did not include a specific discussion of the rationale for supporting lowered realization rates, except for the reasons addressed in the NTG section above.

In sum, realization rates going forward should be presumed for planning purposes to 1.0. In other words, from a planning perspective, one should assume the savings being tracked in the database are correct based on the established TRM rules and actual program activity. Evaluator

adjustments to gross savings because of actual variances in assumptions are simply part of the evaluator's job of determining if the savings were counted properly. Because variances between tracked savings and final evaluation numbers can reflect adjustments for things under the program administrator's control (e.g., errors in assumptions, inappropriate application of the TRM, etc.), the program administrator should be held accountable for these realization rate adjustments. AG Ex. 1.0 at 18.

Moreover, no support exists within the plain language of either Section 8-103 or 8-104 of the Act for such an adjustment or savings evaluation approach. At a minimum, the proposed goals should be adjusted upwards to eliminate the assumed realization rates for public and low income sectors, respectively.

In order to ensure the delivery of cost-effective programs, the Commission should order DCEO to resubmit its Plan, pursuant to Section 8-103(f) and 8-104(f), to remove the reduced realization rates proposed in its Plan for both public sector and low income programs, which have the effect of lowering proposed savings goals unnecessarily. DCEO should also be required to incorporate the same NTG evaluation principles that apply to all utility efficiency programs for its public sector offerings, and thereby retain the calculation of *net* energy savings.

V. FLEXIBILITY

As noted in the People's Initial Brief, all parties in this docket generally agree that *some amount* of program and budget flexibility is needed in order to optimize program implementation. AG IB at 27. However, some meaningful limits must be placed upon this flexibility to ensure the integrity of the Commission review process. AG IB at 27. While there was overall general support for allowing program administrators wide latitude to make plan and program design modifications as they see fit, based on what they are learning in the field, how

markets are responding, and to effectively and in a timely manner make mid-course corrections to improve program effectiveness, DCEO's initial request was too broad. ELPC witness Crandall also raised concerns about the vagueness of DCEO's proposal. ELPC Ex. 1.0 at 4. To alleviate these concerns and achieve some level of consistency with a proposal made in ICC Docket No. 13-0498 (Ameren Illinois Company's Plan 3), AG witness Mosenthal suggested that the Commission establish a limit on flexibility that would trigger positive goal adjustments in the event that any shifts of budgets result in a variance from planned annual program budgets of 20% or more.

Although DCEO raises some challenges to this proposal, DCEO effectively agreed to accept a 20% threshold for program savings goal adjustments, provided that the limit is calculated and applied to shifts in spending between DCEO's public sector, market transformation, and low income programs at the portfolio level. DCEO IB at 12-13. While the People appreciate DCEO's willingness to accept this threshold, the People also reiterate that DCEO has spending limitations within the statute. AG IB at 31; 220 ILCS 8-103(e), (f), (g). Thus, the People remain unclear as to how much flexibility DCEO is actually conceding. It is also unclear from DCEO's Brief as to exactly what it has agreed to do if the 20% threshold is reached. For example, ELPC's Brief makes clear that DCEO must seek Commission approval for program shifts that exceed 20%. ELPC IB at 6. DCEO, however, makes no mention of seeking Commission approval for adjustments that exceed 20 percent. DCEO IB at 13.

DCEO also agreed to continue to inform and consult with the SAG regarding any significant program or budget adjustments, regardless of whether or not the 20% threshold would be exceeded. DCEO IB at 13. The People, however, urge the Commission to make clear that such consultation should occur *prior to* making significant program changes.

The Commission should approve either Mr. Mosenthal’s proposal, which as discussed above and in the AG Initial Brief, would require the following:

- Any DCEO shifts of budgets that result in a variance from planned annual program budgets of 20% or more would trigger goal adjustments. In other words, DCEO could underspend 10% in one program and overspend 15% in another program with no adjustments. However, if they were to shift resources beyond the 20% benchmark, then goals would be modified accordingly.⁷
- DCEO must fully explain the rationale and justification for the program allocation it has selected and confirm programs are cost-effective or make a clear case why they should still be promoting programs that are not cost-effective. DCEO should bring proposed significant modification to program dollar shifting to the SAG for discussion and ideally to build consensus around the change.

In the alternative, the Commission should adopt the proposal described in ELPC’s Brief, which references Commission approval of program changes that exceed 20% of a program budget, with the caveat that consultation with the SAG should occur *prior* to DCEO making significant program changes.

VI. EVALUATION, MEASUREMENT AND VERIFICATION (“EM&V”)

Most issues related to Evaluation, Measurement and Verification (“EM&V”) of certain of DCEO’s programs have been resolved to the satisfaction of the People. However, the People urge the Commission to consider the remaining issues as described below.

A. Code Compliance Initiative

⁷ For example, if program A had a cost of 40 cents/kWh and program B had a cost of only 5 cents/kWh, and if DCEO shifted funds beyond the limit from program A to program B, a commensurate increase in goals would be triggered based on the eight-times higher amount of kWh expected to come from the shifted dollars than was originally planned.

The People appreciate DCEO's commitment to continue meeting with the SAG as well as the Codes Collaborative in order to hash out any remaining issues with DCEO's Code Compliance Initiative. DCEO IB at 29-30. As noted in the People's Initial Brief, DCEO has provided satisfactory answers to most of the issues that the People raised, particularly related to the issue of calculation. AG IB at 33. Nonetheless, the People urge the Commission to direct DCEO to honor its commitment to work with SAG in order to resolve a number of the complex issues relating to measuring code compliance, including long lag times between cycles of new code adoption, new construction building cycles, actual design and construction of buildings, and performance of studies to identify compliance changes.

B. Combined Heat and Power ("CHP")

DCEO recommends in its Brief that the Commission accept its proposed public sector CHP program. DCEO IB at 22. In the AG Initial Brief, the People detailed all of the concerns raised by AG witness Mosenthal regarding this program proposal. Principal among the observations was the conclusion that the DCEO program proposes what appears to be an arbitrary method of counting energy savings that diverges from standard practice in Illinois for claiming "customer side of the meter" savings. Specifically, DCEO proposes to calculate a primary BTU savings on the entire economy⁸ and then arbitrarily allocate this savings estimate, with 80% assigned to electricity and 20% to gas savings. AG Ex. 1.0 at 29. AG witness Mosenthal testified that such a savings calculation approach is inconsistent with normal practice in Illinois for claiming efficiency savings. It also has the potential to reduce the transparency and usefulness of the Section 8-103 (electric) and 8-104 (natural gas) savings data for planning and

⁸ Mr. Mosenthal noted in testimony that DCEO proposes using an average generation heat rate to estimate this savings as well. This is problematic because baseload coal plants typically have much higher heat rates than more recent gas plants that are more likely to be saved on the margin from CHP. As a result, if DCEO uses this proposed approach it is likely that it would overestimate primary BTU savings. AG Ex. 1.0 at 30.

forecasting purposes because savings figures will no longer accurately reflect estimated efficiency impacts on the utility distribution system loads. AG IB at 34.

The AG Initial Brief also pointed out that Section 8-103 and 8-104 programs are designed to reduce customer use of electricity and gas, respectively. For all other measures and programs in Illinois, savings are counted based on the impact of the customer's energy savings at the meter. By diverging from this approach Mr. Mosenthal testified that DCEO:

- has not made clear any reason or justification for this more complicated and non-standard approach;
- reduces the transparency of energy efficiency program savings numbers in Illinois whereby planners, evaluators, and forecasts will have difficulty understanding the true impacts on the electric and gas systems and how the EEPS impacts affect planning functions;
- clearly diverges from current practice of counting actual customer impacts at the meter;
- implies these customers will save gas and that the loads on the gas distribution company systems will go down, when in fact they will increase in most cases;
- under-estimates the actual electric savings on the electric utility systems;
- improperly accounts for the economics of CHP because it will be applying avoided costs to incorrect numbers that do not actually reflect the changes on the utility systems;
- further confuses savings estimates for CHP projects that are not gas-fired by allocating non-existent gas savings to them; and
- requires gas ratepayers to fund 20% of the CHP program, despite all the savings occurring on the electric system, which is inconsistent with how costs are assigned for these programs under Section 8-104 of the Act.

AG Ex. 1.0 at 31. AG witness Mosenthal recommends that the Commission order DCEO to count CHP energy savings just like any other measure. In other words, energy savings should quantify the various electric and fuel impacts at the customer's meter, and on the local distribution utility systems. Such an approach will increase transparency around savings for customers, as well as the utilities and stakeholders. It will also be consistent with the statutory energy efficiency program guidelines, including the TRM. He noted, too, that funding for this program should come from DCEO's electric energy efficiency funds since the measure is an electricity saving measure and the electric avoided cost benefits will accrue to electric ratepayers. *Id.* at 32.

DCEO notes that to address concerns expressed by Mr. Mosenthal as well as NRDC witness Dylan Sullivan, it agrees to several proposals. DCEO IB at 22. One of the proposals listed is "2) expand on the metering requirements to ensure that the EM&V personnel can obtain the needed data to measure the actual energy savings over the first 12 months of the system's operation." It is unclear whether this proposal satisfies Mr. Mosenthal's recommendation that the Commission only approve a CHP program that counts CHP energy savings just like any other measure. In other words, energy savings should quantify the various electric and fuel impacts at the customer's meter, and on the local distribution utility systems. That should be the underlying premise for any agreement related to the program.

DCEO also states that it would agree to "develop much more detailed Program Implementation Guidelines as DCEO does for all of its approved programs." DCEO IB at 22. This proposal is similarly vague. Its final proposal is to continue to work with the Utilities and the SAG in developing the implementation plans and documents. *Id.* This is a proposal that

should be required in the final Order. At a minimum, however, the calculation of energy savings for this new program should follow accepted evaluation procedures outlined by Mr. Mosenthal.

Mr. Mosenthal's proposed methodology for measuring CHP savings, unlike the DCEO proposal, is transparent, apportions savings at the customer meter, consistent with current evaluation practices, and appropriately assigns savings to each affected utility system as it actually occurs. The Commission should order DCEO to revise its CHP calculation of savings methodology consistent with the AG-recommended approach.

C. SEDAC and EPC

The People appreciate the explanation made by DCEO of the efforts undertaken to reduce the risk of double counting associated with the SEDAC and EPC programs. DCEO Ex. 8.0 at 13. As expressed in the People's Initial Brief, DCEO's explanation is satisfactory. AG IB at 37-38.

Notwithstanding this understanding, the People reiterate that maintaining these programs as standalones risks creating market confusion and may create additional administrative burden. Therefore, the People urge the Commission to direct DCEO to include this program as part of DCEO's overall custom program rather than as a standalone program and encourage DCEO to continue seeking the input of the SAG in development of this program.

VII. DCEO PARTICIPATION IN IPA PROCUREMENT

As noted in the AG Initial Brief, DCEO submitted a proposal for program expansions to the IPA for funding and implementation under 16-111.5B that included vital expansions of cost-effective low-income programs. However, the IPA rejected the proposal based on its interpretation of the law which, according to the IPA Procurement Plan pending in Docket No. 13-0546, rejects bids from non-utilities. ICC Docket No. 13-0546, IPA Plan at 84.

Unfortunately, the IPA's interpretation of Section 16-111.5B is that only Utilities can present proposals for additional energy efficiency programs to the IPA, and that if DCEO wants to participate, it must do so through the Utility RFP process outlined in that section of the PUA. ICC Docket No. 13-0546, IPA Procurement Plan at 84.

The Commission has the opportunity in this docket (and in Docket 13-0546) to consider the legal restrictions and determine if it has any ability to order a solution within the constraints of 16-111.5B and State procurement laws. DCEO is a Program Administrator – at least for the public sector and low income customer groups – just as the Utilities are Program Administrators for the remaining customer groups. In the alternative, DCEO could participate in the utilities' RFP bidding process, but with a clear statement that the proposals are conditional on it successfully procuring the appropriate contractors after initial approval by the IPA. At a minimum, the Commission's Order in this Docket, or in the IPA Procurement docket, Docket No. 13-0546, should direct DCEO, the Utilities and the IPA to convene a collaborative workshop process to fully explore and resolve these issues so that DCEO can effectively submit expanded Section 8-103 low income programs into the IPA 2014 procurement process.

DCEO's Initial Brief requests that the Commission not take any action related to the IPA procurement in this docket, noting that the issue is being addressed in that 13-0546 docket. DCEO IB at 25. That recommendation is acceptable, assuming some action is taken in that docket. Either way, unless and until the Commission addresses this problem, low income electric customers will continue to be short-changed in the delivery of energy efficiency programs.

VIII. LARGE INDUSTRIAL/COMMERCIAL PILOT PROPOSAL

In its Brief, REACT argued for the approval of a large industrial/commercial self-direct pilot proposal for DCEO customers, consistent with any self-direct program approved for Commonwealth Edison (“ComEd”) customers. REACT IB at 11. REACT notes that in the current Commission proceeding to approve ComEd’s 2014-2016 energy efficiency plan, “REACT has proposed an electric self-direct program that would allow the largest Illinois electricity users to access their own funds to make cost-effective investments in energy efficiency projects, while providing appropriate monitoring and verification.” *Id.* REACT also points to AG responses to REACT data requests that highlight AG witness Mosenthal’s interest in participating in a SAG-involved collaborative approach to creating an electric commercial/industrial pilot that satisfies the concerns of these large users of energy who claim difficulty in participating in existing energy efficiency programs. REACT IB at 13.

As noted in the AG Initial Brief, the People support a collaborative approach to development of a pilot program that satisfies the concerns of these large customers while creating a program that satisfies the statutory framework for permissible programs under Section 8-103 and 8-104 of the Act. The People do not agree, however, that electric customers can retain Section 8-103 funding for a “self-direct” program as Section 8-103 now reads. For example, Section 8-104 of the Act specifically provides for a self-direct program for qualifying large natural gas customers under subsection 8-104(m). Section 8-103 includes no such self-direct provision.

That being said, the ICC should make clear that program administrators can and must work with all appropriate customers to commit to multi-year projects that span currently approved program or planning periods, particularly in light of the recent modification to Section

8-104(b) of the Act, which permits achievement of annual savings goals over a three-year period, and REACT witness Fults' stated concerns. As noted in the AG Initial Brief, the People have reason to believe that REACT is willing to engage in such discussions, given recent data requests directed to the People, and truly appreciate that kind of cooperation and interest in developing a collaborative approach with ComEd, DCEO and interested stakeholders to address these customers' concerns. In light of REACT's stated concerns, the Commission should direct DCEO to work with REACT, both outside of and in the SAG, in an effort to develop a pilot program that meets the needs of these large customers, but does so within the legal framework established in Section 8-103 and 8-104 of the Act. Such a program, should not authorize customer retention of efficiency dollars for electric programs, given the existing statutory electric/gas framework. The People are happy to commit to working with the affected parties in any way that furthers that goal.

IX. ENERGY EFFICIENCY POLICY MANUAL

In addition to continuing to participate with the SAG as DCEO has pledged, the People in their Initial Brief also urged the Commission to specifically direct DCEO to work with the SAG on an Illinois Energy Efficiency Policy Manual. AG IB at 49-51. The purpose of this policy manual, as the People have been very clear about throughout this docket, is to ultimately streamline and encourage consistency on various program-related policies for review and approval by the Commission. AG IB at 50; AG Ex. 1.0 at 38.

DCEO does not directly address this proposed manual in its Initial Brief and Staff unfortunately continues to object to the People's proposal to create a policy manual. Staff IB at 21. DCEO's Brief, however, inadvertently shines a light directly upon the need for, and the

potential benefits of, the People's proposed manual in its discussion of its proposed elimination of NTG analysis for its public sector programs:

First, the calculated Net-to-Gross values for the Illinois EEPS programs managed by the utilities and DCEO *have varied considerably* for similar or identical programs and from year to year, generally without any clear explanation. This seems to *indicate differences in the methods* used by various evaluators or variability inherent in the methods used by presumably equally competent evaluation teams.

DCEO IB at 34 (Emphasis added.) Here, DCEO acknowledges that otherwise competent evaluation teams can arrive at considerably different values based on the different methods employed by those evaluators. This is precisely the type of situation that the People seek to avoid in the future by creating a consistent policy manual.

Consistent with their testimony, Staff raises concerns about the vagueness of the proposed manual and the dedication of resources required to develop a manual. Staff IB at 21. Staff witness Ms. Hinman, despite being opposed to the policy manual, also notes that there is currently a system where different administrators follow different sets of rules. Tr. at 80. Therefore, as noted in the People's Initial Brief, a policy manual would give the administrators the same set of rules to follow. In addition, it would be of great usefulness to create consistent approaches in evaluation processes, identification of common cost definitions and application of cost-effectiveness evaluation principles among the various utility and DCEO efficiency programs. AG IB at 49.

Throughout this docket, the People have been clear about the goals associated with establishing a Policy Manual. AG IB at 50-51; AG Ex. 1.0 at 38. The primary goal of the proposed policy manual would be to ensure consistency in terms of monitoring savings achieved and evaluating programs. This is particularly true when compared with the current situation where the utilities and DCEO Program Administrators and their individually selected evaluators

play by different evaluation rules. Contrary to the views of Staff, the People are not seeking to further burden the SAG or create additional work that further constrains already limited resources. Rather, the People seek to create the most efficient and consistent processes possible. In the long run, ensuring that evaluation approaches are consistent among the utility and DCEO Program Administrators will save SAG resources that would otherwise spend time trying to understand why program evaluation practices differ so significantly among the evaluation teams.

For these reasons, the People urge the Commission to include within its Order in this docket specific direction for the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated through consistent evaluation practices and rules.

X. CONCLUSION

WHEREFORE, the People respectfully request that the Illinois Commerce Commission enter an order consistent with the recommendations made in the AG Initial Brief and this Reply Brief.

Respectfully submitted,

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